

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of Section 6002(b) of the Omnibus	)	
Budget Reconciliation Act of 1993	)	WT Docket No. 09-66
	)	
Annual Report and Analysis of Competitive	)	
Market Conditions With Respect to Mobile	)	
Wireless including Commercial Mobile Services	)	

**REPLY COMMENTS OF SKYPE COMMUNICATIONS, S.A.R.L.**

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## Summary

Skype Communications, S.A.R.L. (“Skype”) applauds the Commission’s efforts to review the state of competition in the United States wireless industry. While important strides have been made to promote and support competition in this space, more can be done. Skype submits these comments to inform the Commission’s decision-making process, and to urge the Commission to continue efforts to expand and increase innovation and competition in the consumer wireless market.

First, Skype applauds AT&T and Verizon’s recent decisions to make their networks more open. The carriers and their subscribers will benefit from the greater openness of these networks. While welcome, AT&T’s actions were not taken without a significant degree of public and Commission attention on questionable industry practices. Skype urges the Commission to continue to take measures, where necessary, to ensure that American consumers experience the highest levels of satisfaction from the wireless industry as possible. Closed networks, application blocking, and other practices that make pricing signals less transparent to consumers raise questions about whether these policies are pro-consumer. As the Commission considers what it can do to promote competition in the wireless space, it should understand that consumers clearly have a different picture of the wireless industry than the large players portray. Consumer wireless experiences in the United States lag other developed nations both in terms of total cost and freedom of choice. The Commission’s perception of the state of wireless competition should match the consumers’ perception as it considers policies to promote innovation and competition in the wireless space.

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**REPLY COMMENTS OF SKYPE COMMUNICATIONS, S.A.R.L.**

**I. INTRODUCTION AND BACKGROUND**

Skype Communications, S.A.R.L. (“Skype”)<sup>1</sup> files these reply comments in response to the Notice of Inquiry (“NOI”) issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-referenced proceeding on the Commission’s efforts to expand and enhance its analysis of competitive conditions, both to improve its assessment of the current state of competition in the entire mobile wireless market ecosystem and to better understand the net effects on the American consumer.<sup>2</sup> Skype supports the Commission’s efforts to take a

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<sup>1</sup> Founded in 2003, Skype is revolutionizing the way people communicate around the world. Skype has more than 480 million registered users globally who use Skype software to communicate for free through voice and video calls as well as instant messages. Skype generates revenue through its premium offerings, such as calls made to and from landlines and mobiles, voicemail, call forwarding, and short message service (SMS). Skype is used in almost every country on Earth. Conversations over Skype can take place on computers, mobile devices and Skype Certified™ hardware. Consumers have downloaded Skype onto 10% of the iPhones or iPod touches.

<sup>2</sup> See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless including Commercial Mobile Services*, Notice of Inquiry, WT Docket No. 09-66, ¶ 1 (rel. Aug. 27, 2009) (“NOI”).

consumer-centric approach as it develops the record in this proceeding.<sup>3</sup> Everyone should have the right to access wireless services, including the content and applications of their choice, over any network platform, and with the device of their choosing. Open networks will foster innovation and carrier competition, which in turn will support our country's economy, technology platform, and ultimately its global competitiveness.

While there is competition at various levels of the United States wireless industry, much more can be done to foster competition throughout the industry. Recent steps taken by major wireless carriers are moving in the right direction, but much more can be done. Skype submits these reply comments to provide the Commission with background on the state of competition in the wireless industry from the consumer perspective and respectfully urges the Commission to continue to take the steps necessary to ensure that the mobile industry increases the level of competition, which will confer significant benefits to the American consumer and on the service providers.

## **II. RECENT WIRELESS CARRIER OPENNESS POLICY CHANGES ARE POSITIVE DEVELOPMENTS, BUT MORE CAN BE DONE TO ASSURE THE CERTAINTY OF OPENNESS**

### **A. AT&T and Verizon Are Moving in the Right Direction**

Verizon has recently taken substantial steps to promote competition and innovation in the wireless sector. In response, AT&T has followed suit with incremental moves toward openness. AT&T announced that it would allow Skype and other VoIP providers to use

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<sup>3</sup> See, e.g., NOI, ¶ 2 (“A robustly competitive mobile wireless market will be essential to realizing the full benefits to *American consumers* and channeling investment toward vitally important national infrastructure.”) (emphasis added). “We seek to ensure that competition in the mobile wireless market continues to bring substantial benefits to *American consumers*”. *Id.* (emphasis added).

AT&T's 2G and 3G capabilities over the iPhone.<sup>4</sup> Skype welcomes this development, and looks forward to working with AT&T and Apple to provide consumers with enhanced functionality through the Skype iPhone application. Likewise, Verizon and Google announced that the carrier will release cell phones with the Google Android operating system, with Google Voice functionality.<sup>5</sup>

These are significant developments. The announcement by AT&T frees the iPhone from artificial restrictions increasing the value proposition for end users thereby driving demand for the device. Consumers and the public interest are better served by a more open wireless platform. AT&T's actions also appear to support the carrier's recent statements that "AT&T has long supported both the goal of a vibrant, open Internet and the four principles contained in the Commission's *Internet Policy Statement*,"<sup>6</sup> and that "all parties share[] the same desire to preserve the 'free and open' nature of the Internet, a goal enunciated by Chairman Genachowski with which [AT&T] heartily agrees."<sup>7</sup> But we note that while AT&T has announced that it will

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<sup>4</sup> See Letter from Robert W. Quinn, Jr., Senior Vice President, Federal Regulatory, AT&T, to Ruth Milkman, Chief Wireless Telecommunications Bureau Federal Communications Commission, RM-11361, RM-11497 (Oct. 6, 2009).

<sup>5</sup> See Andrew LaVallee, Google and Verizon Say Two Android Phones, With Google Voice, To Come This Year, Wall Street Journal Blogs, (Oct. 6, 2009), available at: <http://blogs.wsj.com/digits/2009/10/06/google-and-verizon-say-two-android-phones-with-google-voice-to-come-this-year/>.

<sup>6</sup> Ex Parte Letter from Robert W. Quinn, Jr., Senior Vice President, Federal Regulatory, AT&T Services, Inc., to Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, Docket Nos. 07-135 & 07-52, at 1 (Sept. 25, 2009) (noting, specifically, that AT&T supports the fourth prong of the Internet Policy Statement, which "is designed to ensure that consumers reap the benefits of competition among providers of networks, applications, services and content.").

<sup>7</sup> Ex Parte Letter from Robert W. Quinn, Jr., Senior Vice President, Federal Regulatory, AT&T Services, Inc., to Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, Docket Nos. 07-135 & 07-52, at 1 (Oct. 14, 2009) (AT&T also apparently agrees that "[e]nsuring  
(Footnote continued on next page.)

provide 2G and 3G network connectivity, the iPhone software development kit (“SDK”), which is controlled by Apple, must still be re-engineered to provide this functionality. Thus, for all practical purposes, the iPhone remains a closed platform even today notwithstanding the few applications that have been approved since the Commission inquired into AT&T’s practices.

AT&T’s decision to open its 2G and 3G network for Skype and other VoIP providers through the iPhone will promote application competition, innovation, and small business entrepreneurship. While these steps are important and move in the right direction, they would not have been taken without a public spotlight on certain questionable practices of the network operators and the attention of the Commission. In this regard, the Commission still has much to do to promote innovation and competition in the wireless sector. The primary focus of the Commission should be to adopt competitive policies that result in balancing investment in services on the edge of the wireless ecosystem with investment in the network core. Policies that promote network edge applications and services will drive consumer demand, allow for increased investments in the network core, result in lower retail prices for services and devices, and thereby benefit the public interest.

**B. Voluntary Wireless Carrier Policy Changes Do Not Guarantee Long-Term Outcomes**

The Commission must exercise vigilance in evaluating and addressing policies that impede openness as such attention is essential to attracting continued investment in edge

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consumers have the ability to go where they want to go on the Internet, communicate with whom they wish and access the lawful content they desire on the devices of their choice were principles that consumer groups, application and content providers and network providers alike supported throughout the discussion.”). *Id.* Left unstated by AT&T is whether AT&T is committed to embracing these principles on its wireless platform as well.

devices and applications. Application providers, and the users that rely on those products, need certainty, and stability. While the Commission and wireless industry should certainly support AT&T's decision,<sup>8</sup> the fact remains that the company, and others, can change that position next year, next month, next week, or even apply a different standard for other types of applications or application providers. Uncertainty has real costs for service providers at the edge of the network, like Skype. In short, the Commission must ensure that future applications, devices, and all service providers are subject to rules that prevent the blocking of any lawful application on wireless devices. Application providers at the network's edge cannot live and die by the day-to-day, and frequently inconsistent, decisions made by the large network providers. At a minimum, such regulatory uncertainty increases costs and can restrict access to capital. Investors are less likely to devote capital to ventures where another party can determine whether it succeeds or fails by simply blocking or impeding its access to existing and potential customers. The Commission must undergird decisions such as AT&T's with common-sense regulations that assure that the operator will maintain open networks and not discriminate against applications, devices, or their providers.

While Skype supports the efforts of network operators to open up their platforms and to embrace openness principles, our work is not yet done. For example, when the wireless network neutrality debate began in early 2007, carriers claimed that allowing Skype on mobile

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<sup>8</sup> See Chairman Genachowski's CTIA Statement, at 1 ("I also appreciate AT&T's announcement yesterday allowing internet calling applications on the iPhone -- a decision I commend. And also Verizon's announcement about the Android platform. These are both wins for consumers...").



platforms was technically infeasible.<sup>9</sup> Recent developments demonstrate that it is technically feasible to operate an open 3G wireless network that supports Internet applications like Skype. Even with these exciting new announcements we can and must do better.

### **III. THE WIRELESS INDUSTRY, WHILE MORE COMPETITIVE THAN THE WIRELINE INDUSTRY, IS STILL FAR FROM COMPETITIVE**

#### **A. Consumers Are Unsatisfied With The U.S. Wireless Service Market**

As Skype has argued in the past,<sup>10</sup> the wireless industry is far from a perfectly competitive market, with several trends heading toward greater consolidation and less competition.<sup>11</sup> First, the record before the Commission clearly indicates that consumer choice, especially in rural areas, is limited.<sup>12</sup> Senator John D. Rockefeller stated at a hearing in June 2009: "I am extremely concerned for my great state of West Virginia that we have second-class wireless service in too many communities throughout America."<sup>13</sup> Special access rates for middle mile

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<sup>9</sup> See Reply Comments of CTIA--The Wireless Association, RM-11361, at 2-3 (May 15, 2007) (noting the technological differences between wireline and wireless networks, and detailing potential technological issues that would prevent an application like Skype from running on a wireless handset, including "degrade[ed] network performance," "harmful interference," and "security threats.").

<sup>10</sup> See generally Reply Comments of Skype Communications S.A.R.L., WT Docket No. 09-66 (July 13, 2009).

<sup>11</sup> See, e.g., Comments of the Consumer Federation of America, *et al.*, Docket No. 09-66, at 24 (Sept. 30, 2009) ("At present, market concentration and consolidation have increased spectrum acquisition barriers for new entrants while simultaneously consolidating the lion's share of spectrum holdings into the hands of the two largest wireless providers. The Commission's flexible spectrum allocation and secondary markets policies have not done enough to counter-balance these effects.").

<sup>12</sup> See, e.g., Comments of U.S. Cellular, Docket Nos. 09-157, 09-51, 09-66, at 9 (Sept. 30, 2009) ("Despite their size and huge spectrum holdings, the Big Four carriers have decided not to serve many rural areas."). See also Comments of Cellular South, Docket No. 09-66, at 3 ("exclusive device arrangements between national wireless carriers and device manufacturers are distorting the wireless marketplace and interfering with the opportunity of small rural and regional carriers to acquire new and popular devices for their customers.").

<sup>13</sup> Statement of John D. Rockefeller, IV at Hearing of the Senate Committee on Commerce, Science & Transportation, "The Consumer Wireless Experience" (June 17, 2009).

transport favors the top two carriers and disadvantages the rest.<sup>14</sup> Unlike other industries, the wireless industry remains plagued by expensive consumer equipment and services like texting.<sup>15</sup>

Claims that the wireless space is fully competitive are specious, and ignore the fundamental experience of consumers. In a recent Zogby International Study, consumers overwhelmingly showed their dissatisfaction with mobile service provider service, wireless industry exclusivity arrangements, and related issues. For example, nearly 60 percent of respondents agreed with the statement: "Wireless providers have too much power over how consumers can use their handsets." Conversely, only 20 percent disagreed with that statement.<sup>16</sup> Likewise, 53 percent of respondents stated that they were concerned or very concerned "that a lack of competition among wireless providers will hinder the development of high-speed Internet access for cell phones and other mobile devices."<sup>17</sup> Tellingly, 70 percent of respondents did not think that the exclusive deal that AT&T has with Apple to provide network service for the iPhone was fair to consumers.<sup>18</sup> "Exclusive arrangements of this type do not foster the devel-

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<sup>14</sup> See, e.g., Comments of Sprint Nextel Corporation, GN Docket No. 09-51, at 9-10 (filed June 8, 2009) ("The longstanding problems caused by lack of competition for special access have been exacerbated by mega-mergers in the telecommunications industry. For example, AT&T and Verizon both strengthened their already significant competitive advantages by absorbing the two leading competitive providers (MCI and legacy AT&T) of DSI and DS3 transmission links, thereby eliminating these entities as independent competitors. AT&T's merger with BellSouth also consolidated control of Cingular (now AT&T Mobility), increasing AT&T's incentives to raise the costs of its wireless rivals through increased special access prices.").

<sup>15</sup> See Consumer Affairs, [http://www.consumeraffairs.com/cell\\_phones/cell\\_phones.htm](http://www.consumeraffairs.com/cell_phones/cell_phones.htm).

<sup>16</sup> See Zogby International, Inc., Zogby Interactive Survey of Adults, at 2 ("Zogby Study") (attached hereto as Attachment A).

<sup>17</sup> Zogby Study, at 4.

<sup>18</sup> Zogby Study, at 4.

opment of innovative devices, rather they deter the dissemination of such devices broadly to consumers.”<sup>19</sup>

Consumers do not feel the same level of satisfaction with the big players in the wireless industry that those companies appear to feel for themselves. This is clearly displayed in another recent study released by the CFI Group. That study found that the “iPhone is the undisputed leader in smartphone customer satisfaction—iPhone scores 83 out of 100 on the ACSI scale.”<sup>20</sup> But, “[t]here is little relationship between users’ satisfaction with their smartphone and satisfaction with their providers. The iPhone’s high satisfaction does not improve AT&T’s customer satisfaction in any meaningful way. Smartphone satisfaction accounts for about 15% of a person’s likelihood to recommend the network.”<sup>21</sup> *“Half of iPhone respondents would like to defect to a different provider.”*<sup>22</sup> Consistent with those results, the Zogby International Study found that 64 percent of respondents agreed with the Commission’s decision to vote to open an inquiry into the competition among wireless providers. Consumers might be happy with the device, but they are not happy with the service provider, and cannot switch to a new provider to improve their consumer experience or buy a different service package.

## **B. Wireless Industry Statistics Do Not Paint the Full Picture**

Even in the face of high consumer dissatisfaction with wireless service providers and their anti-consumer practices, over the past several months CTIA has seeded the Commission’s

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<sup>19</sup> Comments of MetroPCS Communications, Inc., Docket Nos. 09-157 & 09-51, at 20 (Sept. 30, 2009).

<sup>20</sup> CFI Group *Smartphone Satisfaction Study 2009; Smartphones, Providers, and the Customers Who Love (and Loathe) Them*, at 4 (2009) (“CFI Group Study”).

<sup>21</sup> CFI Group Study, at 5.

<sup>22</sup> CFI Group Study, at 6 (emphasis supplied).

dockets with comments and other filings claiming that the wireless market is “robustly competitive.” For example, on August 14, 2009, CTIA filed an *ex parte* letter along with a series of studies and prior comments that it had filed in a number of FCC dockets.<sup>23</sup> Within the series of attachments to the CTIA *Ex Parte* Letter were several items that distort the actual current wireless landscape in the United States. In sum, a closer look at CTIA’s claims show that they are far from compelling.

Specifically, CTIA filed an analysis that asserts that per-minute revenue for United States CMRS carriers is far below the per-minute revenue of wireless carriers in other developed countries.<sup>24</sup> In isolation, without looking at other charges imposed upon customers, this analysis misleads the reader into thinking that the United States CMRS market is the most cost-competitive wireless market in the developed world.<sup>25</sup> However, this analysis appears to overlook the large fixed monthly charges that United States CMRS carriers impose on their customers.<sup>26</sup> Based on a study released by the OECD,<sup>27</sup> when you incorporate the fixed charges

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<sup>23</sup> See *Ex Parte* Letter from Christopher Guttman-McCabe, CTIA, to Marlene H. Dortch, Secretary, FCC, GN Docket. No. 09-51; WT Docket Nos. 08-165, 08-166, 08-167, 09-66 (Aug. 14, 2009) (“CTIA *Ex Parte* Letter”).

<sup>24</sup> See CTIA *Ex Parte* Letter, at Attachment “Value.”

<sup>25</sup> Likewise, the Commission’s NOI in this proceeding notes that “Previous *CMRS Competition Reports* have included information on revenue per minute figures (a proxy for price per minute) for different countries reported by Merrill Lynch.” However, while there may be value of this analysis, Skype asserts that the most important consideration for the Commission is the end user experience. While revenue per minute may be a good metric, Skype asserts that total cost to the customer for a given amount of usage better considers the public interest.

<sup>26</sup> CTIA *Ex Parte* Letter, at Attachment “Value” (claiming that “American consumers enjoy unparalleled value when compared to our foreign counterparts. As the following chart shows, U.S. consumers pay less for each minute of wireless voice use than consumers around the world....The United States has the lowest revenue per minute of all 26 OECD countries tracked by Bank of America/Merrill Lynch. The U.S. average revenue per minute is 60% lower than the average of the other 25. The U.S. average revenue per minute is nearly 65% lower than the average European country”).

into the analysis, which OECD did in their report, the United States CMRS market is actually one of the least competitive markets in terms of total customer cost:

- For “low usage,”<sup>28</sup> the United States ranks last.<sup>29</sup>
- For “medium usage,”<sup>30</sup> the United States ranks last.<sup>31</sup>
- Finally, for “high usage,”<sup>32</sup> the United States improves its status: it ranks twenty-fifth out of thirty countries studied.<sup>33</sup>

The result is clear: dollar for dollar, consumers in the United States pay more for mobile service than consumers in other OECD countries. A key question for the FCC to consider is how much of the price of a handset is incorporated in the minutes-of-use plans offered by the

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<sup>27</sup> Information and Communications Technologies, OECD Communications Outlook 2009 (Aug. 2009), available at: [http://www.oecdilibrary.org/oecd/content/book/comms\\_outlook-2009-en](http://www.oecdilibrary.org/oecd/content/book/comms_outlook-2009-en) (“OECD Study”).

<sup>28</sup> The first “low usage” basket looks at a low-use profile and includes 360 voice calls, 396 SMS messages and eight MMS over one year. *See* OECD Study, at 276.

<sup>29</sup> For low usage, the average yearly price for the mobile basket is USD 164 PPP per year or USD 14 per month across the OECD. The least expensive low-usage offers are in Denmark, Finland and Sweden at prices ranging from USD \$4.19 to USD \$6.47 per month. At the other end, the highest monthly price for the baskets are found in the United States (USD \$23), Spain and the Czech Republic (USD \$20). *See* OECD Study, at 275.

<sup>30</sup> The medium-use basket includes 780 voice calls, 600 SMS messages and eight MMS messages. *See* OECD Study, at 276.

<sup>31</sup> The average price for the basket across the OECD is USD \$26 per month. Finland, the Netherlands and Sweden have the lowest prices for the basket ranging between USD \$11 and USD \$12 per month. On the other end of the spectrum, the most expensive baskets are in Canada, Spain and the United States where monthly prices range from USD \$42 to USD \$53 per month for the identical basket of calls. *See* OECD Study, at 276.

<sup>32</sup> The high-use basket increases to 1 680 voice calls, 660 SMS messages and 12 MMS messages per year. *See* OECD Study, at 277.

<sup>33</sup> The average price of the high-use basket across the OECD is USD \$41 per month. The countries with the least expensive high-use baskets are Denmark, the Netherlands and Sweden with prices between USD \$15 and USD \$16 PPP per month. In contrast, the most expensive countries for the high-use basket are the Czech Republic, the Slovak Republic and Spain. The same high-use basket in these countries is between USD 71 and USD 80 PPP. The United States *See* OECD Study, at 277.

major wireless carriers in the United States? Specifically, the minute bands and unlimited usage plans require a certain monthly spend (*i.e.*, use it or lose it). If handsets were unlocked from wireless carriers, how much could such plans fall on a minutes-of-use basis? Also, unlocking the handset purchase from the wireless carriers would allow consumers to make real decisions about the level of wireless service they would like to consume, without the difficult externalities (such as having to balance network services, service costs, handset availability, handset costs, and other factors, all into one decision). People that just want to make calls could buy less sophisticated devices and presumably less expensive wireless plans as the minutes-of-use pricing would not include the handset subsidy. Similarly, those that want enhanced applications, voice service, SMS texting, IM, e-mail, and other features, would necessarily choose different usage plans but presumably at retail prices lower than those available currently as there would be no handset subsidy built into the minutes-of-use plans. And even if handset subsidies make sense for some consumers, consumers should retain the ability to acquire unlocked handsets and take them to the wireless service of their choice. Unlocked devices would allow users to jump from carrier to carrier, based on the level of service and prices offered by competitors, similar to what local number portability accomplished in the wireline and wireless world. It would also spur innovation and, necessarily, competition.

**C. We Can Do Better By Actively Supporting and Promoting the Network Edge**

Regardless of the reams of filings attempting to prove the competitive nature of the wireless market in the United States, Skype's argument is that consumers are entitled to more choice and innovation compared to the current level of competition in the wireless market-

place.<sup>34</sup> Clearly, consumers have benefited from competition in the United States' mobile market over the past decade. However, many of the consumer benefits realized over recent years have been a result of innovation at the edge of the market. Core innovation, undeniably, provides consumer benefits too,<sup>35</sup> but the question for the Commission is not whether the CMRS providers alone have done a good job; it is whether we can do better, and how.

At present, consumer choice in the United States is less—or at best, on par—with the choices available to wireless consumers in other countries with comparable economies. This is true even though the United States is one of the largest markets in the world for sophisticated wireless services, both in terms of market size and average consumer disposable income, and therefore should have more consumer choice and competition, lower prices, and access to numerous innovative wireless applications. For example, CTIA discusses the diversity of United States CMRS carriers in several filings, claiming that market share is spread across a larger number of carriers in the United States relative to several European and Asian countries.<sup>36</sup> However, the United States is much larger than some of the European and Asian countries that CTIA uses for comparison that are almost city-states. For example, comparing the

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<sup>34</sup> Reply Comments of Skype Communications S.A.R.L., WT Docket No. 09-66, at 1 (July 13, 2009) (“Skype does not disagree with commenters who argue that there is some amount of access-level competition between wireless providers. However, Skype respectfully submits that we can do better than this minimal amount of competition in wireless.”).

<sup>35</sup> “[A]ll of you are changing the world. You’ve turned clunky one-trick handsets into sleek and powerful mini-PCs. You’ve made the Internet mobile, freeing broadband from the desktop and making it possible to imagine a world where the Internet is available to anyone, anywhere, anytime.” Prepared Remarks of Chairman Julius Genachowski, Federal Communications Commission, “America’s Mobile Broadband Future”, International CTIA Wireless I.T. & Entertainment, San Diego, California, at 1 (Oct. 7, 2009) (“Chairman Genachowski’s CTIA Statement”).

<sup>36</sup> See, e.g., CTIA *Ex Parte* Letter, at Attachment “Market Concentration.”

entire United States against Belgium makes little sense when Belgium is comparable in size to the State of Maryland and in population to the State of Michigan.<sup>37</sup> According to recent European Commission reports, across the *entire* EU,

[t]he number of mobile network operators has remained about the same. As was the case last year, there are more 3G networks offering commercial services than 2G networks, thereby completing the transition to the newer technology. 87 operators are now offering 3G on a commercial basis, which is an increase from 86 operators last year.<sup>38</sup>

Thus, while individual European countries may have fewer market participants than the United States, the sizes of those markets are much smaller than the United States. Given the large number of mobile network operators in Europe, unlike the United States, the wireless industry is essentially deregulated (absent some issue-specific holdovers such as roaming rates), and across the entire EU no one or two carriers claim overall market dominance.<sup>39</sup>

A marketplace in which wireless network operators have the ability to define policies concerning access to third-party applications and content, and restrict the devices that may be used on such platforms, is inconsistent with promoting competition, encouraging innovation,

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<sup>37</sup> See CIA, World Factbook, available at: <https://www.cia.gov/library/publications/the-world-factbook/index.html>. Belgium is approximately 30,528 sq km, and has a population of approximately 10.4 million (2009 est.). Maryland has approximately 5.6 million residents (2008 est.), and an area of approximately 12,193 sq. mi. (approximately 31,580 sq km) according to the Maryland State Archives, <http://www.msa.md.gov/msa/mdmanual/01glance/html/mdglance.html>. See U.S. Census Bureau, State and County QuickFacts - Michigan, available at: <http://quickfacts.census.gov/qfd/states/26000.html> (according to 2008 estimates, Michigan had a population of just over 10 million).

<sup>38</sup> Commission Staff Working Document Accompanying the Communication from the Commission to the Council, The European Parliament, the European Economic and Social Committee and the Committee of the Regions; Progress Report on the Single European Electronic Communications Market (14th Report), at 15 (2009), available at [http://ec.europa.eu/information\\_society/policy/ecomms/doc/implementation\\_enforcement/annualreports/14threport/Vol1Part1\\_30072009.pdf](http://ec.europa.eu/information_society/policy/ecomms/doc/implementation_enforcement/annualreports/14threport/Vol1Part1_30072009.pdf) (emphasis added) (“EU 14th Report”).

<sup>39</sup> See generally EU 14th Report.



and accelerating the deployment of faster wireless networks. The Commission must focus on adopting policies applicable to the entire wireless ecosystem that will foster a virtuous cycle that begins with “killer apps” offered on the edges, creating demand for new devices and more usage, resulting in increased investment in wireless network facilities. Network openness is the key to creating a virtuous cycle and to achieve true openness, promote innovation, and boost competition, the Commission should apply the *Internet Policy Statement* to all broadband networks, with allowances based on the technical characteristics of each network. Under such a regulatory regime, consumers would be allowed to use their mobile broadband connections for any lawful purpose that does not harm the network. Only in that way is competition advanced and innovation fostered. Innovation in the wireless market cannot come from the wireless network operators alone. As a software developer, Skype understands that carriers must have incentives to build out their networks and offer enhanced services to consumers. Skype would not exist but for broadband Internet connections (either wireline or wireless). But, we can do better. Consumers will benefit from a wireless ecosystem in which carriers, device manufacturers, and software applications developers *all* have the incentive to innovate and offer new products and services in a robustly competitive marketplace.

#### **IV. CONCLUSION**

Recent developments in the wireless industry towards greater openness and non-discrimination are positive outcomes. However, these outcomes came not from a completely hands off approach, but rather from Commission attention to questionable carrier practices. Skype urges the Commission to adopt policies and regulations that ensure network openness and nondiscrimination. Carrier policies left unchecked have also resulted in confusing retail

pricing structures, closed networks, and threaten investment in the edge of the wireless ecosystem. Finally, as the Commission considers what it can do to promote competition in the wireless space, it should understand that consumers clearly have a different picture of the wireless industry than the large players portray. Consumer wireless experiences in the United States lag other developed nations both in terms of total cost and freedom of choice. The Commission should bear this fact in mind as it considers policies to promote competition in the wireless space.

Respectfully submitted,

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